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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHOWCASE MALL JOINT VENTURE,

Plaintiff-counter-defendant -
Appellant,

v.

BOXING HALL OF CHAMPIONS LLC;
BOXING HALL OF FAME LLC;
MULTIFACET LLC,

Defendants - Appellees,

HOWARD P. MILSTEIN,

Defendant-counter-claimant -
Appellee.

No. 06-15438

D.C. No. CV-02-00237-PMP

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada

Philip M. Pro, District Judge, Presiding

Argued and Submitted February 13, 2008
San Francisco, California

Before: D.W. NELSON, KLEINFELD, and HAWKINS, Circuit Judges.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Boxing Hall of Champions, LLC (“Champions”) entered into a commercial lease (“Lease”) with Showcase Mall (“Showcase”). Champions intended to use space within the mall to operate a restaurant, museum and retail outlet with a boxing theme. The store never opened, however, and Champions breached the Lease. Showcase sued Champions and other defendants for breach of the Lease and a related Guaranty, claiming damages in excess of \$24 million. The district court, after a bench trial, determined that Showcase had failed to prove its alleged damages. The court held for defendants, and awarded them, as prevailing parties, attorneys’ fees and costs totaling \$285,149. Showcase appeals the district court judgment and the attendant fee award.

“The party seeking damages has the burden of proving the fact that he was damaged and the amount thereof.” *Gibellini v. Klindt*, 885 P.2d 540, 543 (Nev. 1994); *see also Clark Cty. Sch. Dist. v. Richardson Const., Inc.*, 168 P.3d 87, 97 (Nev. 2007). That burden extends to providing the court with an evidentiary basis upon which it may properly determine a reasonably accurate amount of damages. *Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co.*, 784 P.2d 954, 955 (Nev. 1989). At trial, Showcase provided scant evidence and sought a windfall. To support its claim for \$24 million in damages, Showcase presented only a

demonstrative exhibit reflecting inflated calculations. Its sole witness on the question of damages had no personal knowledge of how Showcase arrived at its estimates. Showcase calculated that it was owed fifteen years worth of future rents, but did not discount its claim to reflect the present value of any such payments. In addition, Showcase sought compensation for capital improvements that would redound to its benefit. Finally, though Showcase sought damages to replace fifteen years worth of future rents, it was revealed on cross-examination that, on the eve of trial, Showcase had sold the building. As the district court held, that sale obscured Showcase's efforts to prove damages. A large portion of Showcase's purported damages represented future rents, but it had sold the property from which it would potentially have received those rents.

Given the paucity of evidence that Showcase set forth, the district court properly concluded that Showcase did not meet its burden of proving damages.

AFFIRMED.